IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2200 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

M S PATEL

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR HK RATHOD for Respondent No. 1

UNSERVED for Respondent No. 2

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 09/10/97

ORAL JUDGEMENT

The petitioner herein is State Road Transport Corporation. It is aggrieved by the award of the Labour Judge, Bharuch, dated 18th July 1996 passed in Reference (LCB) No.876 of 1990 granting reinstatement with 50% of the back wages and continuity to respondent no.1 workman. This petition seeks to challenge that order.

2 RULE had been issued in this matter by another judge on 18th March 1997 making it retunable on 11th April 1997. While issuing the Rule the learned judge stayed the relief granted by the Labour Court with respect to grant of 50% backwages. With respect to the grant of reinstatement, the learned Judge directed the stay thereof subject to the provision of Section 17-B of the Industrial Disputes Act, 1947. The respondent-workman filed his affidavit on 30th July 1997 pointing out that he is unemployed. Before that affidavit could be considered, the petitioner corporation chose to reinstate the workman on 8th September 1997 pending the decision of this petition and hence there was no need to award any interim wages under Section 17-B pending disposal of this petition.

3 The facts leading to the present petition are as follows. Respondent no.1 - workman joined in the services of the petitioner-corporation on 22nd April 1979. He has been working as a bus conductor. It was alleged against him that while he was on duty on 20th January 1985 he did not issue tickets to two groups of passengers : one group of five adults and another group of 3 adults and one child. The checking inspector made his report after taking the statements of the passengers. A departmental inquiry was held against respondent no.1 and the inquiry officer came to the conclusion that the cahrge had been established. The petitoner corporation therefore passed an order dismissing respondent no.1 by its order dated 4th September 1989. Respondent no.1 sought a reference to the Labour Court under the Industrial Disputes Act, 1947. On the reference being made, respondent no.1 did not dispute the correctness of the notes of inquiry recorded by the management. The matter was therefore argued on the correctness of the findings arrived at by the inquiry officer as also the propriety of the order of dismissal. The learned Labour Judge after hearing both the sides came to the conclusion that the finding arrived at by the inquiry office was not correct. Respondent no.1-workman also led evidence about his difficulties and as to how he remained unemployed after his dismissal. The learned Labour Judge therefore awarded reinstatement with continuity and 50% back wages. It is this award which is challenged before me.

4 Mrs Pahwa, learned advocate for the petitioner, and Mr Rathod, learned advocate for the workman have made their submissions. Two points arise for my determination in this case. Firstly as to whether the learned Judge of the Labour Judge was justified in interfering with finding of guilt recorded by the departmental authorities and secondly, whether the order of dismissal was correctly interfered with and as to whether the relief granted was proper in the circumstances.

5 As far as the first point, namely, correctness of the findings is concerned, Mrs Pahwa drew my attention to the notes of inquiry. She pointed out that the checking inspector had been examined in the inquiry. He had produced the statements given by the passengers to him on the date of the incident. Mrs Pahwa submitted that so long as this evidence remained undisturbed, there was material before the inquiry officer on the basis of which he could arrive at the conclusion of the guilt. Mr Rathod on the other hand submitted that the passengers concerned were not made available for cross-examination in the departmental inquiry. He also submitted that on the very date of the incident, respondent no.1 had lodged a complaint against the checking inspector. He further submitted that the way bill had never been produced in the inquiry. Now, as far as way bill is concerned, though it is an important piece of evidence, it is a circumstantial factor. A copy of the complaint against the checking staff could have been produced by the respondent-workman himself though he has stated of having lodged the complaint in his deposition in defence. It is true that he has asked a question to the checking inspector with respect to that complaint made by him to the Depot Manager. In reply, the checking inspector has stated that at the time of checking he did find 8 adults and one child without tickets and he has recorded their statements. A copy of the complaint made against the inspector was not made available in the inquiry and the checking inspector has stated that it is the depot manager himself, if at all, who will be able to say anything about that complaint (since he had no occasion to look into it).

6 Mr Rathod, learned advocate for the respondent, submitted that in view of these facts, a finding of guilt ought not to have been recorded by the departmental authorities. It is however relevant to note that it was not a criminal prosecution where the allegations had to be proved beyond doubt. The checking inspector has maintained his statement and he has produced the

statements of the passengers. It has not been put to him that no such statements were recorded from the passengers at all. In fact, the signature of the workman was also taken on the statement which was recorded on the date of the incident. The Honourable Supreme Court in the case of State of Haryana v. Rattan Singh reported in AIR 1977 SC 1512 has observed, "In a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act." In that view of the matter, in my view, it is not possible to say that the finding of guilt recorded by the inquiry officer was erroneous.

7 Mr Rathod submitted that the learned Labour Judge had the power to differ from the finding of the enquiry officer if a proper case is made out. He relied upon the observations of the Honourable Supreme Court in the case of Workmen of Fire Stone Tyre & Rubber Co. Ltd. v. The Management reported in AIR 1973 SC 1227 where in para 32 the Honourable Supreme court observed as under:

> "This position, in our view, has now been changed by Section 11A. The words, `in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified' clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, haw now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitation imposed on the powers of the Tribunal by the decision in Indian Iron & Steel Co. Ltd. 1958 SCR 667 = AIR 1958 SC 130 case can no longer be invoked by an employer. THe Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be

so; and now now it is the satisfaction of the Tribunal that finally decides the matter."

There cannot be any quarrel with this proposition of Mr Rathod. However, conceding the power in the Labour Court to reappraise the evidence, in the facts of the case as discussed earlier, the learned Judge has erred in coming to the conclusion that the misconduct had not been established.

8 The next question to be considered is as to what should be the appropriate punishment for the concerned misconduct and what should have been the order of the learned Labour Judge. The past service record of the respondent-workman has been produced by the petitioner-corporation. It shows that prior to this partricular incident of 20th January 1985, there were four different incidents and two were of a similar type, namely, of not issuing the tickets to the passengers. In one of these prior incidents, the employee had been held guilty and his annual increment was stopped for six months. Earlier, for an incident of reporting late for night duty one increment of his had been stopped. What is relevant to note is that although that incident had occurred in the month of January 1985, the inquiry got concluded in the year 1989 and the impugned order came to be passed on 4th September 1989. During this period also there were two incidents one of which is a minor one. The other incident occurred on 25th April 1995 wherein two groups of passengers requiring 23-1/2 and 2 tickets were said not to have been issued the tickets. Although an order of dismissal was passed in that proceeding, the employee came to be reinstated in the second departmental appeal on 1.10.1987. Thus, when that order came to be passed on 1.10.1987 the petitioner management very well knew that earlier charge sheet based on the present incident of 20.1.1985 was pending against the petitioner. It could have maintained the order of dismissal but, it afforded an opportunity and reinstated him by reducing him to the basic salary of Rs.369. No incident whatsoever has been reported from 1.10.1987 until dismissal order was passed in the present enquiry on 4th September 1989 which is nearly a period of two years. Inasmuch as the workman has shown an improvement in his conduct during this period of two years, in my view, the order of dismissal was not warranted.

9 The fact however remains that the management could have awarded some other punishment to the workman for this misconduct and it could still be imposed. But prior to the dismissal he had been reduced to a much low

basic salary on 1.10.1987. Thereafter he having been dismissed, has lost his wages from the date of dismissal i.e. from 4.9.1989 till he was reinstated on 8.9.1997 for a period of 8 years. In the circumstances, in my view, although the interference by the learned judge in the finding of the guilt was not called for, the direction to reinstate the workman could still be maintained with additional punishment of warning to be entered in his service book which would suffice. The Honourable Supreme Court in the case of Scooter India Limited v. Labour Court, Lucknow reported in AIR 1989 SC page 149 had laid down that erring workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee. It cannot be said that merely because the Labour Court found the inquiry to be lawful and finding not to be vitiated in any manner that it ought not have interfered with the order of termination. In my view, as stated above, since the workman has shown good performance during the period from 1.10.1987 to 4.9.1989, the order of dismissal was not called for. The fact also remains that though the petitioner had the option to pay the wages and keep the employee out of employment they have chosen to reinstate him on 8.9.1997. In that view of the matter, the order of reinstatement with continuity of service will remain unaltered with additional punishment of `warning' to be entered in his service book. In the above referred case of Scooter India (supra) the Honourable Supreme Court has laid down that the question of punishment can be re-examined and has also laid down later in Workmen of Bharat Fritz v. Management AIR 1990 SC 1054 that High Court can itself suitably modify the punishment instead of remitting the matter to the Tribunal. In my view, in the facts of the present case, the above modification of the punishment and entering warning in the service record would meet ends of justice.

10 The learned Labour Judge has awarded 50% back wages to the respondent. Mrs Pahwa very much assails the same. She submits that inasmuch as that the guilt has been established and also inasmuch the order of termination was being interfered with in the particular facts of the case, he ought not to have been awarded any back wages. Mrs Pahwa submits that assuming without conceding that the workman was unemployed and that he had financial difficulties, it was a situation which was created by him and a public corporation ought not to have been saddled with any back wages for a person like this. Besides, the service record of the respondent is not good. Inmy view, in the facts of the case, the submission is required to be accepted. A workman could

not be awarded back wages in a situation like this. In the view that I am taking the punishment given was excessive, but again it cannot be lost sight of that the departmental officers have imposed this excessive punishment on the background of the past record of the workman. Besides, the workman is undisputedly responsible for this situation and his miseries. The impugned award is therefore set aside to the extent of grant of back wages only. The workman was reinstated on 8.9.1997. The impugned award is dated 18th July 1996. The workman will bee entitled to wages for the period from 18th July 1996 to 8th September 1997. The petitioner shall release this amount along with his pay for the month of October 1997.

11 In the circumstances, the impugned award is set aside to the extent the learned Judge has interfered with the finding of the guilt arrived at by the departmental authorities. The operative part of the award with respect to reinstatement with continuity of service is however confirmed with additional punishment of warning to be recorded in his service book. The award of 50% of the backwages is set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

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